

Montana Water Court
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FILED
04/18/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41G-0550-R-2023
Weisz, Madeleine
2.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

* * * * *

CLAIMANT: United States of America (Department of
Agriculture Forest Service)

CASE 41G-0550-R-2023
41G 95605-00
41G 95606-00
41G 95607-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claims 41G 95605-00, 41G 95606-00, and 41G 95607-00 appeared in the Basin 41G Preliminary Decree with DNRC issue remarks.

2. A filing deadline was set for the United States to address the issue remarks and to file better quality maps. The United States did not file anything by the deadline. The issue remarks will be addressed based on the best information before the court.

3. Claims 41G 95605-00, 41G 95606-00, and 41G 95607-00 are commercial water right claims from Little Pipestone Creek and Unnamed Tributaries of Little Pipestone Creek. The claims all received the following issue remarks:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

The first issue remark is a notice-only issue remark. The remark has served its purpose of providing notice and should be removed from the claim abstracts.

The second issue remark was placed on the claim during DNRC claim examination. There is no support in the claim files for placement of the remark. It is not clear what evidence, if any, the remarks are based on. Accordingly, the issue remarks do not overcome the prima facie status of the claims and should be removed from the claim abstracts.

4. Claim 41G 95607-00 received an additional issue remark that states:

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON LITTLE PIPESTONE CREEK WITH A PRIORITY DATE PREDATING CASE NO. 3234 , MADISON COUNTY.

There is no evidence before the court that indicates the claimed priority date is incorrect. The priority date issue remark is not supported by evidence sufficient to

overcome the prima facie proof afforded the priority date for this claim. The issue remark should be removed from the claim abstract.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provides a sufficient basis to do so. § 85-2-248(3), MCA.

3. The requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. If it meets this standard, then the burden of proof shifts to the claimant to prove his or her claim's validity. An issue remark is weighed like any other evidence. When an issue remark is placed on a claim, "the information resulting in the issue remark and the issue remark *must be weighed against* the claimed water right." § 85-2-247(2), MCA (emphasis added). The Water Court shall review an issue remark "to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the identified issue remark or to determine if the issue remark can be corrected as a clerical error." § 85-2-248(3), MCA. Determining whether the factual issues raised by an issue remark have been resolved requires the exercise of judicial discretion.

Id.

The issue remarks appearing on the claims in this case do not overcome the prima facie status of the claims. The issue remarks should be removed from the claim abstracts. No changes should be made to the elements of the claims.

RECOMMENDATIONS

1. The issue remarks should be removed from claims 41G 95605-00, 41G 95606-00, and 41G 95607-00.

Post Decree Abstracts of Water Right Claims are served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail

USA (Dept of Agriculture Forest Service)
Water Rights Program Manager,
Northern Region
26 Fort Missoula Rd
Missoula, MT 59804-7203

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 95605-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: AUGUST 10, 1909

Type of Historical Right: FILED

Purpose (use): COMMERCIAL
RAILROAD PURPOSES

Flow Rate: 120.00 GPM

Volume: 97.05 AC-FT

Source Name: UNNAMED TRIBUTARY OF LITTLE PIPESTONE CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS SECTION HOUSE CREEK

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSESE	11	1N	7W	SILVER BOW

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Ditch Name: RAILROAD DAM NO. 1

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SWSESE	11	1N	7W	SILVER BOW

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESESE	11	1N	7W	SILVER BOW

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 95606-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: DECEMBER 31, 1947

Type of Historical Right: USE

Purpose (use): COMMERCIAL
RAILROAD PURPOSES

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS
ONSTREAM RESERVOIR.

Volume: 97.05 AC-FT

Source Name: UNNAMED TRIBUTARY OF LITTLE PIPESTONE CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS SECTION HOUSE CREEK

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESESW	11	1N	7W	SILVER BOW

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Ditch Name: RAILROAD DAM NO. 2

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NESESW	11	1N	7W	SILVER BOW

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWNESE	11	1N	7W	SILVER BOW

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 95607-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: USA (DEPT OF AGRICULTURE FOREST SERVICE)
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION
26 FORT MISSOULA RD
MISSOULA, MT 59804 7203

Priority Date: AUGUST 10, 1909

Type of Historical Right: FILED

Purpose (use): COMMERCIAL
RAILROAD PURPOSES

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS
ONSTREAM RESERVOIR.

Volume: 200.00 AC-FT

Source Name: LITTLE PIPESTONE CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNENE	11	1N	7W	SILVER BOW

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DAM

Ditch Name: RAILROAD DAM NO 3

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWNENE	11	1N	7W	SILVER BOW

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2NESE	11	1N	7W	SILVER BOW